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7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 XOCHITL HERNANDEZ, CESAR
12 MATIAS, for themselves and on behalf
of a class of similarly-situated
individuals,

13 Plaintiffs-Petitioners,

14 v.

15 LORETTA LYNCH, U.S. Attorney
16 General, JUAN P. OSUNA, Director,
Executive Office for Immigration
17 Review, JEH JOHNSON, Secretary,
Department of Homeland Security,
18 SARAH R. SALDANA, Director,
Immigration and Customs Enforcement
19 (ICE), DAVID JENNINGS, Field Office
Director, Los Angeles Field Office of
20 ICE, JAMES JANECKA, Warden,
Adelanto Detention Facility;
21 CHRISTINA HOLLAND, Jail
Administrator, Santa Ana City Jail,
22 CARLOS ROJA, Chief, Santa Ana City
Department, JON BRIGGS, Captain,
23 Orange County Sheriff's Department
(OCSD), MIKE KRUEGER, Captain,
24 OCSD, SANDRA HUTCHENS, Sheriff,
Orange County, in their official capacity
25 only,

26 Defendants-Respondents.
27
28

) Case No. 16-620

) **COMPLAINT – CLASS ACTION**

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19 * *pro hac vice* or admission application forthcoming

INTRODUCTION

1
2 1. This class action lawsuit challenges the federal government’s policy and
3 practice of setting cash bonds for noncitizens in immigration proceedings, without
4 regard to a noncitizen’s financial resources, which has resulted in the incarceration of
5 individuals merely because they are poor. As a result of these policies and practices,
6 many noncitizens—including longtime lawful permanent residents and asylum seekers
7 fleeing persecution (including in some cases unlawful imprisonment)—are ordered
8 released on a cash bond but cannot pay it, and remain detained for prolonged periods
9 while their immigration cases are pending. The detention of such individuals is not
10 justified by any valid interest, but rather is based on nothing more than the fact that
11 they are poor or otherwise lack the financial ability to pay their bonds.

12 2. Plaintiffs-Petitioners Xochitl Hernandez, a mother and grandmother who has
13 resided in the United States for more than twenty-five years, and Cesar Matias, a
14 Honduran national seeking asylum in the United States, are detained under the
15 Immigration and Nationality Act (“INA”), 8 U.S.C. § 1226(a). Each Plaintiff has been
16 granted release on a money bond pending their immigration removal proceedings.
17 However, Plaintiffs face months or even years in immigration detention because they
18 are unable to pay the bond set by Defendants. Indeed, Mr. Matias has already been
19 detained nearly three-and-a-half years because he cannot afford to pay his bond.

20 3. Plaintiffs’ detentions result from three flaws in the immigration detention
21 process. First, as a matter of policy and practice, immigration officials are not required
22 to consider an immigration detainee’s financial ability to pay when setting a money
23 bond. Second, when they do set the bond amount, immigration officials require
24 noncitizens to post the full cash bond amount to be released, instead of permitting
25 noncitizens to post a deposit, property, or other assets as collateral. And third, as a
26 matter of policy and practice, immigration officials are not required to consider
27 whether alternative conditions of supervision (such as electronic monitoring or
28 periodic reporting requirements), alone or in combination with a lower bond amount,

1 would be sufficient to mitigate flight risk and thus permit the person's release. The
 2 result is that the government incarcerates Plaintiffs and others solely because they lack
 3 the financial means to post the full bond amount that Defendants have set.

4 4. Plaintiffs are not alone. On any given day, at least a hundred similarly situated
 5 immigration detainees remain detained in this District on money bonds set pursuant to
 6 Defendants' policies and practices.

7 5. Defendants' policies and practices violate the INA; the due process and equal
 8 protection guarantees of the Fifth Amendment; and the Eighth Amendment's
 9 Excessive Bail Clause. A person's poverty or lack of financial resources should not
 10 deprive him of his freedom. Indeed, the federal government has recognized in the
 11 criminal bail context that "[i]ncarcerating [criminal defendants] solely because of their
 12 inability to pay for their release . . . through the payment of . . . a cash bond . . .
 13 violates the Equal Protection Clause" and that bail systems must "take individual
 14 circumstances into account"—including the person's financial ability to pay.¹

15 6. The same principles should govern here. The INA and U.S. Constitution require
 16 that the government both assess an individual's financial ability to pay when setting
 17 bond and determine if alternative forms of bond or other conditions of supervision
 18 permit the detainee's release. These basic procedures are necessary to ensure that
 19 Plaintiffs and similarly situated individuals are not impermissibly imprisoned based
 20 solely on their inability to pay.

21 PARTIES

22 7. Plaintiff-Petitioner Xochitl Hernandez is a native and citizen of Mexico. She is
 23 detained at the Adelanto Detention Center in Adelanto, California pending
 24 immigration removal proceedings. Ms. Hernandez came to the United States as an

25
 26 ¹ Statement of Interest of the United States at 1, 8 (hereinafter "Varden Statement"),
 27 *Varden v. City of Clanton*, No. 2:15-cv-00034-MHT (M.D. Ala. filed Feb. 13, 2015)
 28 (Dkt. 26) *sub nom. Jones v. The City of Clanton*; accord U.S. Dep't of Justice, Dear
 Colleague Letter, Mar. 14, 2016, at 7-8, *available at*
<https://www.justice.gov/crt/file/832461/download> (stating that "[c]ourts must not
 employ bail or bond practices that cause indigent defendants to remain incarcerated
 solely because they cannot afford to pay for their release").

1 adolescent, and has lived in the United States for more than 25 years. Ms. Hernandez
2 is a single mother who has raised five children in the United States, and cares for her
3 four grandchildren. All her children and grandchildren are United States citizens. Prior
4 to her detention, Ms. Hernandez lived with her children and grandchildren, and
5 cooked, cleaned, and cared for her family, including her mother who suffers from a
6 heart condition. More than a decade ago, Ms. Hernandez was convicted for
7 shoplifting, for which she was sentenced to one-day in jail; it is the sole crime for
8 which she has been convicted during her decades in the United States. In March 2016,
9 an immigration judge conducted a bond hearing in Ms. Hernandez's case under
10 Section 1226(a) and set her bond at \$60,000. Ms. Hernandez and her family do not
11 have the financial ability to pay this bond. Ms. Hernandez's adult children have no
12 assets, and have to dedicate their limited earnings to rent, food, and other basic
13 necessities. Ms. Hernandez remains detained because of Defendants' policy and
14 practice of failing to consider immigration detainees' financial ability to pay a bond;
15 requiring detainees to post the full cash bond amount to be released; and failing to
16 consider whether release on an alternative form of bond or conditions of supervision
17 would sufficiently address any concerns about flight risk. Ms. Hernandez is eligible
18 for cancellation of removal and for a U-visa (as a victim of domestic violence), but
19 faces the prospect of months or years in detention until her immigration case is
20 resolved.

21 8. Plaintiff-Petitioner Cesar Matias is a native and citizen of Honduras. Prior to his
22 detention, Mr. Matias resided in Los Angeles and worked as a hair stylist. Mr. Matias
23 has been detained for more than four years at the Santa Ana City Jail in Santa Ana,
24 California pending immigration removal proceedings. A gay man, Mr. Matias is
25 seeking protection in the United States on account of the severe persecution he
26 suffered in Honduras because of his sexual orientation. In November 2012, and again
27 in February 2013, August 2013, and August 2014, Defendants authorized Mr. Matias'
28 release on a \$3,000 bond under Section 1226(a). However, Mr. Matias has remained

1 detained because of Defendants' policy and practice of failing to consider immigration
2 detainees' financial ability to pay a bond; requiring detainees to post the full cash
3 bond amount to be released; and failing to consider whether release on an alternative
4 form of bond or conditions of supervision would sufficiently address any concerns
5 about flight risk. Mr. Matias' removal case is pending at the Ninth Circuit Court of
6 Appeals, which has ordered a stay of removal and appointed him pro bono counsel in
7 connection with his appeal. He faces the prospect of months or years of additional
8 detention until his case is resolved.

9 9. Defendant-Respondent Loretta Lynch is the Attorney General of the United
10 States and the most senior official in the U.S. Department of Justice ("DOJ"). She has
11 the authority to interpret the immigration laws and adjudicate removal cases. The
12 Attorney General delegates this responsibility to the Executive Office for Immigration
13 Review ("EOIR"), which administers the immigration courts and the Board of
14 Immigration Appeals ("BIA"). She is named in her official capacity.

15 10. Defendant-Respondent Juan P. Osuna is the Director of EOIR, the agency
16 within DOJ responsible for the immigration courts and the BIA. He is named in his
17 official capacity.

18 11. Defendant-Respondent Jeh Johnson is the Secretary of the U.S. Department of
19 Homeland Security ("DHS"), an agency of the United States. Secretary Johnson is a
20 legal custodian of Plaintiff-Petitioners and other members of the proposed class
21 ("Plaintiffs"). He is named in his official capacity.

22 12. Defendant-Respondent Sarah R. Saldaña is the Director of U.S. Immigration
23 and Customs Enforcement ("ICE"). ICE is responsible for apprehension, detention,
24 and removal of noncitizens from the United States. Director Saldaña is a legal
25 custodian of the Plaintiffs. She is named in her official capacity.

26 13. David Jennings is the Field Office Director for the Los Angeles Field Office of
27 ICE, a component of DHS. Director Jennings has custody of the Plaintiffs and is
28 named in his official capacity.

1 14. Defendant-Respondent James Janecka is the Warden of the Adelanto Detention
2 Facility in Adelanto, California. Warden Janecka has custody of the Plaintiffs and is
3 named in his official capacity.

4 15. Defendant-Respondent Christina Holland is the Jail Administrator of the Santa
5 Ana City Jail in Santa Ana, California. Defendant Holland has custody of the
6 Plaintiffs and is named in her official capacity.

7 16. Defendant-Respondent Carlos Roja is the Chief of the Santa Ana City
8 Department, which operates the Santa Ana City Jail in Santa Ana, California. Chief
9 Holland has custody of the Plaintiffs and is named in his official capacity.

10 17. Defendant-Respondent Jon Briggs is a Captain in the Orange County Sheriff's
11 Department and the Officer-in-Charge of the Theo Lacy Facility in Santa Ana,
12 California. Captain Briggs has custody of the Plaintiffs and is named in his official
13 capacity.

14 18. Defendant-Respondent Mike Krueger is a Captain in the Orange County
15 Sheriff's Department and the Officer-in-Charge of the James A. Musick Facility in
16 Irvine, California. Captain Krueger has custody of the Plaintiffs and is named in his
17 official capacity.

18 19. Defendant-Respondent Sandra Hutchens is the Sheriff of Orange County, which
19 operates the Theo Lacy Facility in Santa Ana, California, and the James A. Musick
20 Facility in Irvine, California. Chief Hutchens has custody of the Plaintiffs and is
21 named in her official capacity.

22 **JURISDICTION AND VENUE**

23 20. Jurisdiction is proper under 28 U.S.C. §§ 1331, 1361, 1651, 2241; the
24 Suspension Clause, U.S. Const. art. I, § 2; and 5 U.S.C. § 702.

25 21. Plaintiffs seek declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-
26 2202.

27 22. Venue is proper in the Central District of California under 28 U.S.C. § 1391
28 because at least one federal Defendant is in this District, the Plaintiffs are detained in

1 this District, and a substantial part of the events giving rise to the claims in this action
2 took place in this District.

3 **BACKGROUND**

4 **Legal Background**

5 23. INA § 236(a), 8 U.S.C. § 1226(a), authorizes immigration officials to release a
6 noncitizen on appropriate conditions pending the resolution of his or her immigration
7 case. Section 1226(a) provides that, “pending a decision on whether the alien is to be
8 removed from the United States,”

9 “the Attorney General--

10 (1) may continue to detain the arrested alien; and

11 (2) may release the alien on--

12 (A) bond of at least \$1,500 with security approved by, and
containing conditions prescribed by, the Attorney General;

or

13 (B) conditional parole”

14 *Id.*

15 24. The Attorney General shares his authority to detain or release noncitizens under
Section 1226(a) with the Secretary of Homeland Security. *See* 8 U.S.C. § 1103(a) &
16 (g); Homeland Security Act of 2002, Pub. L. No. 107-296, § 441, 116 Stat. 2192.

17 25. The Department of Homeland Security (“DHS”) makes an initial custody
18 determination for each noncitizen detained under the statute, whereby the agency
19 considers him or her for release on bond, recognizance, or other conditions (such as
20 electronic monitoring, periodic reporting requirements, restrictions on travel, or
21 enrollment in a substance abuse program). With some exceptions not relevant here,
22 noncitizens may seek review of an ICE custody determination before an immigration
23 judge (“IJ”) at a hearing commonly known as a “bond hearing.” *See* 8 C.F.R.
24 §§ 1003.19(a) & (h)(2)(i). At the bond hearing, the IJ likewise determines whether the
25 noncitizen can be released on bond, recognizance, or other conditions. *See* 8 C.F.R.
26 § 1236.1(d)(1); 8 C.F.R. § 1003.19.

27 26. To obtain release from ICE or the IJ, the noncitizen must “demonstrate to the
28 satisfaction of the officer that [his or her] release would not pose a danger to property

1 or persons, and that [he or she] is likely to appear for any future proceeding.” 8 C.F.R.
 2 § 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102 (BIA 1999). A noncitizen
 3 found to present a danger to persons or property is ineligible for release on bond.
 4 *Matter of Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006). If the person does not pose a
 5 danger and is likely to appear at future proceedings, the ICE officer or IJ determines
 6 whether the noncitizen may be released on recognizance, bond, or other conditions
 7 that will sufficiently address any concerns about flight risk. *See id.* at 39-40.

8 27. There is presently no requirement that ICE consider a detainee’s poverty or
 9 financial ability to pay when setting a bond under Section 1226(a). Nor is there any
 10 requirement that ICE determine whether conditions of supervision, alone or in
 11 combination with a lower bond, would suffice to allow for the person’s release.

12 28. Under BIA precedent, the IJ has “broad discretion in deciding the factors that
 13 he or she may consider in custody redeterminations.” *Guerra*, 24 I. & N. Dec. at 40.
 14 However, there is no requirement that IJs consider an individual’s ability to pay the
 15 bond. Indeed, in a series of unpublished decisions, the BIA has held that a person’s
 16 financial circumstances are *irrelevant* to a bond determination. *See In Re Sandoval-*
 17 *Gomez*, 2008 WL 5477710, at *1 (BIA Dec. 15, 2008) (“an alien’s ability to pay the
 18 bond amount is not a relevant bond determination factor”); *In Re Castillo-Cajura*,
 19 2009 WL 3063742, at *1 (BIA Sept. 10, 2009) (same). Nor is there any requirement
 20 that IJs determine whether conditions of supervision, alone or in combination with a
 21 lower bond, would sufficiently address any concerns about flight risk and therefore
 22 suffice to allow for the person’s release.

23 29. The regulations further permit the noncitizen to seek a new bond
 24 redetermination by the IJ, but “only upon a showing that the alien’s circumstances
 25 have changed materially since the prior bond redetermination.” 8 C.F.R. § 1003.19(e).
 26 However, Defendants do not recognize a person’s financial inability to post bond,
 27 despite having made good faith efforts to do so, as a “changed circumstance” that
 28 warrants a new bond hearing.

1 30. Section 1226(a) imposes a minimum \$1,500 bond, “with security approved by
2 . . . the Attorney General.” However, in practice ICE or IJs routinely set higher bonds,
3 such as \$20,000, \$25,000, and even \$100,000 or more.

4 31. Moreover, although Section 1226(a) refers broadly to “security approved by . . .
5 the Attorney General,” the government has a policy and practice of requiring
6 immigration detainees to post the full cash value of the immigration bond to obtain
7 release. In sharp contrast to the criminal justice system, no other forms of secured
8 bonds are deemed acceptable, such as deposit bonds—where the noncitizen would
9 post a percentage (such as 10%) of the bond as security, and the total bond amount
10 becomes due only if he fails to appear—or property bonds, where property valued at
11 the full bond amount would be posted as security and would be forfeited if the person
12 fails to appear.

13 32. The government’s reliance on full cash bonds—without consideration of an
14 individual’s financial ability to pay the bond—is out of step with well-established
15 procedures in federal and state courts. Under the federal Bail Reform Act, a district
16 court must consider a range of alternative conditions before ordering release on
17 monetary bond and “may not impose a financial condition that results in the pretrial
18 detention of the person.” *See* 18 U.S.C. § 3142(a)-(c). Likewise, state criminal justice
19 systems in this Circuit require that judicial officers must consider a defendant’s
20 financial ability to pay at custody hearings. *See, e.g.,* Alaska Stat. Ann.

21 § 12.30.011(c)(8) (requiring court to consider “assets available to the person to meet
22 monetary conditions of release”); Cal. Penal Code § 1270.1 (requiring court to
23 consider detained person’s “ability to post bond”); Nev. Rev. Stat. Ann. § 178.498
24 (requiring bail to be set with regard to “[t]he financial ability of the defendant to give
25 bail”); Mont. Code Ann. § 46-9-301 (requiring bail to be “considerate of the financial
26 ability of the accused”); Haw. Rev. Stat. Ann. § 804-9 (amount of bail should be
27 determined so as not “to render the privilege useless to the poor”); Wash. Rev. Code
28 Ann. § SUPER CT CR CrR 3.2(b)(6) (“If the court determines that the accused must

1 post a secured or unsecured bond, the court shall consider, on the available
 2 information, the accused's financial resources for the purposes of setting a bond that
 3 will reasonably assure the accused's appearance.”). *See also Gusick v. Boies*, 72 Ariz.
 4 233, 237 (1951) (noting that that court should consider “the ability of the accused to
 5 give bail” when setting bail to comport with the prohibition of excessive bail).

6 33. Bond systems for criminal detainees also routinely accept the posting of deposit
 7 or property bonds, rather than insisting on payment of a full cash bond.

8 34. Federal and state officials—including the U.S. Department of Justice—are
 9 increasingly calling for an end to the over-reliance on monetary bond, fines, fees, and
 10 other financial constraints that disproportionately affect low-income individuals in the
 11 criminal justice system.² However, the federal government's immigration detention
 12 policies practices suffer from the same flaws.

13 **CLASS ACTION ALLEGATIONS**

14 **Defendants' Policies and Practices for Setting Immigration Bonds in the Central** 15 **District of California**

16 35. ICE detains several thousand noncitizens in the Central District of California
 17 (the “District”) at any given time, primarily at four detention facilities. The largest, the
 18 Adelanto Detention Facility in Adelanto, California, is operated by the GEO
 19 Corporation and has capacity to hold approximately 1,950 immigrants. ICE also
 20 detains noncitizens in three other detention centers located in Orange County. The
 21 James A. Musick Facility in Irvine, California, is operated by the Orange County
 22 Sheriff and has capacity to hold approximately 350 immigrants. The Theo Lacy
 23 Facility in Orange, California, is operated by the Orange County Sheriff and has
 24 capacity to hold approximately 475 immigrants. The Santa Ana City Jail in Santa Ana,
 25 California, is operated by the Santa Ana City Police and has capacity to hold
 26 approximately 200 immigrants.

27 36. As a matter of policy, practice, or both, ICE and IJs in the District are not
 28

² *See Varden Statement at 5-8, 11, 13-14.*

1 required to consider an individual's financial resources in setting bond amounts under
2 Section 1226(a).

3 37. As a matter of policy, practice, or both, Defendants require that immigrants post
4 the full cash bond to be released.

5 38. As a matter of policy, practice, or both, ICE and IJs are not required to consider
6 whether an alternative form of bond or conditions of supervision, alone or in
7 combination with a lower bond, would suffice to address flight risk and permit
8 release.

9 39. On any given day, at least 100 immigrants—and likely many more—remain
10 detained in this District under Section 1226(a) on a bond set pursuant to these policies,
11 practices, or both. This is so even though, by setting a bond, Defendants have already
12 determined that such individuals do *not* pose a danger to the community or a level of
13 flight risk that requires their detention.

14 40. The stories of the individual Plaintiffs are typical of the detention practices in
15 this District. For example, Plaintiff Matias was ordered released on a \$3,000 bond
16 following a bond hearing in immigration court in approximately November 2012. At
17 the hearing, the IJ did not ask any questions about his financial circumstances or
18 ability to pay a bond. At a court hearing in February 2013, Mr. Matias again requested
19 release from detention to retrieve documents for his removal case. The IJ refused,
20 telling him the bond set was “pretty generous” even though he could not afford it. In
21 approximately August 2013, ICE re-evaluated Mr. Matias's custody, but did not
22 inquire into his financial circumstances or ability to pay a bond. ICE issued a decision
23 ordering him released on a \$3,000 bond, the same bond amount ordered by the IJ that
24 he had been unable to afford. At a hearing in approximately August 2014, Mr. Matias
25 requested that the IJ consider releasing him on non-monetary conditions but the IJ
26 refused, stating that the \$3,000 bond amount was “reasonable,” even though Mr.
27 Matias had been unable to afford it for more than a year and a half at that point. As of
28 this time, Mr. Matias has remained detained for more than three and a half years since

1 his bond was initially set.

2 41. Similarly, Ms. Hernandez was ordered released on a \$60,000 bond following a
3 bond hearing in immigration court in March 2016. The immigration judge found that
4 Ms. Hernandez was not a danger to the community, but that she “posed a flight risk”
5 because she might not win her immigration case. However, prior to setting the bond,
6 the immigration judge did not inquire into Ms. Hernandez’s financial circumstances or
7 her ability to pay a bond, and did not state whether he considered whether she could
8 be released on non-monetary conditions that would suffice to address concerns about
9 flight risk. Because Ms. Hernandez and her family lack the resources to pay the bond,
10 she has been detained for several weeks since the bond was initially set, and faces the
11 prospect of months or years of additional time in detention until her case completes.

12 42. Plaintiffs’ experiences are similar to those of other proposed class members.
13 For example, in one case of a detainee held in the Central District, an IJ refused to
14 lower a bond to an amount the detainee’s family could afford on the ground that
15 evidence of financial circumstances was “irrelevant” to the bond amount
16 determination. In another case of a detainee held in the Central District, a different IJ
17 refused to consider a detainee’s indigence and dismissed evidence of financial
18 hardship because “everyone is poor in here.”

19 **This Action Satisfies the Requirements of Federal Rule of Civil Procedure 23**

20 43. Plaintiffs Hernandez and Matias bring this action pursuant to Federal Rules of
21 Civil Procedure 23(b)(2) on behalf of themselves and all other persons similarly
22 situated. The proposed class is defined as follows:

23 All individuals who are or will be detained pursuant to 8 U.S.C.
24 § 1226(a) on a bond set by an U.S. Immigration and Customs
25 Enforcement officer or an Immigration Judge in the Central District of
26 California.

26 44. The requirements of Rule 23(a)(1) are met in this case because the class is so
27 numerous that joinder of all members is impracticable. At any given time, at least 100
28 persons remain detained on a bond set by government officials in this District

1 pursuant to the bond policies and practices that Plaintiffs challenge. More individuals
2 will become class members in the future, as Defendants continue to detain additional
3 noncitizens under Section 1226(a) on a monetary bond pursuant to their bond policies
4 and practices.

5 45. Moreover, because Plaintiffs and proposed class members are detained pending
6 removal proceedings, they may win their cases and be released or deported upon the
7 conclusion of their removal cases. The inherently transitory state of the proposed class
8 further demonstrates that joinder is impracticable.

9 46. The proposed class meets the commonality requirements of Federal Rule of
10 Civil Procedure 23(a)(2) because all proposed class members are subject to
11 Defendants' three common policies or practices: Defendants' failure to require that
12 ICE and IJs consider an individual's ability to pay in setting a bond under Section
13 1226(a); Defendants' requirement that detainees post full cash bonds rather than other
14 forms of secured bonds; and Defendants' failure to require a determination that no
15 conditions of supervision, alone or in combination with a lower bond, would mitigate
16 flight risk. Defendants have concluded that they are not required to make such
17 inquiries or to accept alternative forms of secured bonds, and this policy applies to all
18 members of the proposed class.

19 47. The proposed class meets the typicality requirements of Federal Rule of Civil
20 Procedure 23(a)(3) because the claims of the representative Plaintiffs are typical of the
21 claims of the class. Plaintiffs Hernandez, Matias, and the class they seek to represent
22 are all individuals who are or will be detained on a full cash bond pursuant to Section
23 1226(a), and whose bonds have been set or will be set without any requirement that
24 Defendants consider their financial ability to pay or the adequacy of an alternative
25 bond or alternative conditions of supervision. Plaintiffs Hernandez, Matias, and the
26 proposed class also share the same legal claims, which challenge the legality of these
27 bond policies and practices under the INA, the Due Process Clause and equal
28

1 protection guarantee of the Fifth Amendment, and the Eighth Amendment's Excessive
2 Bail Clause.

3 48. The proposed class meets the adequacy requirements of Federal Rule of Civil
4 Procedure 23(a)(4). Plaintiffs Hernandez and Matias seek the same relief as the other
5 members of the class—namely, custody decisions that require consideration of both
6 their financial ability to pay a money bond and the adequacy of alternative conditions
7 of supervision, as well as the opportunity to post forms of security other than a full
8 cash bond—and they do not have any interests adverse to those of the class as a
9 whole.

10 49. In addition, the proposed class is represented by counsel from the American
11 Civil Liberties Union of Southern California, the American Civil Liberties Union
12 Immigrants' Rights Project, and experienced pro bono attorneys. Counsel have
13 extensive experience litigating class action lawsuits and other complex cases in
14 federal court, including civil rights lawsuits on behalf of immigration detainees.

15 50. Finally, the proposed class satisfies Federal Rule of Civil Procedure 23(b)(2)
16 because the immigration authorities have acted on grounds generally applicable to the
17 class by failing to apply procedures required by the U.S. Constitution and Section
18 1226(a) to all members of the proposed class. Thus, final injunctive and declaratory
19 relief is appropriate with respect to the class as a whole.

20 51. In the alternative, the class also qualifies for certification under Federal Rules of
21 Civil Procedure 23(b)(1)(A) and (b)(1)(B).

22 **CLAIMS FOR RELIEF**

23 **First Claim**

24 **Violation of the Immigration and Nationality Act**

25 52. All of the foregoing allegations are repeated and realleged as though fully set
26 forth herein.

27 53. Defendants' policies and practices for setting bond violate the Immigration and
28 Nationality Act ("INA"), 8 U.S.C. § 1226(a). Properly construed, Section 1226(a)

1 does not permit the government to detain Plaintiffs and proposed class members on a
 2 full cash bond absent consideration of the person's financial ability to pay the bond
 3 amount and consideration of whether an alternative form of bond or other conditions
 4 of supervision, alone or in combination with a lower bond, would sufficiently mitigate
 5 flight risk. Plaintiffs' detention under Section 1226(a) in the absence of such
 6 procedures violates the INA.

7
 8 **Second Claim**
 9 **Violation of the Due Process Clause of the Fifth Amendment**
 10 **to the United States Constitution**

11 54. All of the foregoing allegations are repeated and realleged as though fully set
 12 forth herein.

13 55. The Fifth Amendment to the U.S. Constitution provides that "[n]o person shall
 14 be . . . deprived of life, liberty, or property, without due process of law." U.S. Const.
 15 amend. V. Due process requires that civil immigration detention be reasonably related
 16 to preventing flight and danger to the community and be accompanied by adequate
 17 procedures to ensure those goals are being met.

18 56. For these reasons, due process does not permit the government to detain
 19 Plaintiffs on a full cash bond absent a determination of a person's financial ability to
 20 pay the bond amount and whether an alternative form of bond or other conditions of
 21 supervision, alone or in combination with a lower bond, can sufficiently mitigate
 22 flight risk.

23 **Third Claim**
 24 **Violation of the Equal Protection Guarantee of the Fifth Amendment**

25 57. All of the foregoing allegations are repeated and realleged as though fully set
 26 forth herein.

27 58. The Fifth Amendment prohibits denying individuals the equal protection of the
 28 laws.

59. The government's detention of individuals because they lack the financial
 resources to pay a money bond, while affording release to individuals who can afford

1 a money bond, discriminates against individuals who are indigent or lack the
2 resources to pay their bonds.

3 60. For this reason, equal protection does not permit the government to detain
4 Plaintiffs on a full cash bond absent a determination of a person's ability to pay the
5 bond amount and whether an alternative form of bond or other conditions of
6 supervision, alone or in combination with a lower bond, can sufficiently mitigate
7 flight risk.

8 **Fourth Claim**
9 **Violation of the Excessive Bail Clause of the Eighth Amendment**
10 **to the United States Constitution**

11 61. All of the foregoing allegations are repeated and realleged as though fully set
12 forth herein.

13 62. The Eighth Amendment provides that "[e]xcessive bail shall not be required
14" U.S. Const. amend. VIII. "[B]ail must be set by a court at a sum designed to
15 ensure" the government's goals of preventing flight and danger—"and no more."
16 *United States v. Salerno*, 481 U.S. 739, 754 (1987).

17 63. Thus, the Eighth Amendment does not permit the government to detain
18 Plaintiffs on a full cash bond absent a determination of a person's ability to pay the
19 bond amount and whether an alternative form of bond or other conditions of
20 supervision, alone or in combination with a lower bond, can sufficiently mitigate
21 flight risk.

22 **PRAYER FOR RELIEF**

23 Plaintiffs ask this Court to grant the following relief:

- 24 1. Certify this case as a class action lawsuit, as proposed herein, appoint Plaintiffs
25 Hernandez and Matias as representatives of the class and the undersigned counsel as
26 class counsel;
- 27 2. Declare that Defendants' policy and practice, as described in this Complaint, of
28 detaining class members on a full cash bond without requiring that ICE and the IJ
consider class members' financial ability to pay when setting a bond, as well as the

adequacy of an alternative form of secured bond and alternative conditions of supervision, violates the INA, 8 U.S.C. § 1226(a), and the Fifth and Eighth Amendments to the U.S. Constitution;

3. Order the Defendants to assess each class member's financial ability to pay in setting a bond under 8 U.S.C. § 1226(a) and consider whether an alternative form of secured bond or other conditions of supervision, alone or in combination with a lower bond, would mitigate flight risk and permit the class member's release. If a class member is unable to pay any bond set by the IJ after making good faith efforts to do so, Defendants must provide the class member with a new bond hearing before the IJ to determine if he or she may be released on an alternative form of secured bond or other conditions of supervision, alone or in combination with a lower bond;

4. Grant Plaintiffs Hernandez and Matias's writs of habeas corpus and order a bond hearing where the IJ considers their financial ability to pay a monetary bond and whether an alternative form of secured bond or other conditions of supervision, alone or in combination with a lower bond, would mitigate flight risk and permit the Plaintiffs' release. If the Plaintiff is unable to pay any new bond set by the IJ after making good faith efforts to do so, Defendants must provide him or her with a new bond hearing before the IJ to determine if he or she may be released on an alternative form of secured bond or other conditions of supervision, alone or in combination with a lower bond;

5. Grant an award of attorneys' fees and costs; and

6. Grant such other relief as may be just and reasonable.

Respectfully submitted,

ACLU OF SOUTHERN CALIFORNIA

Dated: April 6, 2016

/s/ Michael Kaufman

MICHAEL KAUFMAN

Counsel for Plaintiffs-Petitioners